

United States District Court
Eastern District of California

Patrick William Banks,

Petitioner,

vs.

Mark Shepherd, et al.,

Respondents.

No. Civ. S 05-0797 MCE PAN P

Order

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Petitioner requests appointment of counsel on the grounds he is indigent and lacks legal training and the law is complex.

There is no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, whenever the court determines the interests of justice so require, representation may be provided for any financially eligible person who is seeking relief under section 18 U.S.C. § 2254. 18 U.S.C. § 3006A(a)(2)(B). Unless an evidentiary hearing is necessary, the decision to appoint counsel

1 is discretionary. Bashor v. Risley, 730 F.2d 1228, 1234 (9th
2 Cir.), *cert. denied*, 469 U.S. 838 (1984); Rule 8(c), Rules
3 Governing § 2254 Cases.

4 In deciding whether to appoint counsel the court exercises
5 discretion governed by a number of factors, including the
6 likelihood of success on the merits and the applicant's ability
7 to present his claims in light of their complexity. Weygandt v.
8 Look, 718 F.2d 952, 954 (9th Cir. 1983); see also, LaMere v.
9 Risley, 827 F.2d 622, 626 (9th Cir. 1987). Ordinarily the
10 presumption of regularity in the state's procedures for confining
11 prisoners suggests a lack of likely success and counsels against
12 appointment of counsel. See Maclin v. Freake, 650 F.2d 885, 887
13 (7th Cir. 1981). As a general rule, the court will not appoint
14 counsel unless the applicant shows his claim has merit in fact
15 and law. Id. Even if the applicant overcomes this hurdle, the
16 court will not appoint counsel if the law is settled and the
17 material facts are within the petitioner's possession, viz., they
18 do not require investigation outside the prison walls. Id. at
19 887-88.

20 Here, petitioner alleges his due process rights were
21 violated in connection with parole proceedings. Factual
22 development is not required because these proceedings are limited
23 to claims that already were identified and presented to the
24 California Supreme Court. There is, on the record before the
25 court, no reason to believe appointment of counsel would be of
26 significant benefit. Although courts are in disagreement

1 regarding the existence of a liberty interest appointment of
2 counsel would not be helpful because the issue presently is
3 pending before the court of appeals.

4 Petitioner's April 22, 2005, request for the appointment of
5 counsel therefore is denied.

6 So ordered.

7 Dated: August 11, 2005.

8 /s/ Peter A. Nowinski

9 PETER A. NOWINSKI

10 Magistrate Judge
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